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(Confidential Attorneys Eyes Only)

1 No. 126, Original

2 _____±_____

3 IN THE

4 SUPREME COURT OF THE UNITED STATES

5 _____±_____

6 STATE OF KANSAS,

7 Plaintiff,

8 v.

9 STATE OF NEBRASKA

10 and

11 STATE OF COLORADO,

12 Defendants.

13 _____±_____

14 BEFORE THE OFFICE OF THE SPECIAL MASTER

15 _____±_____

16

17

18 CONFIDENTIAL

19

20

21 CONFIDENTIAL DEPOSITION OF: L. MICHAEL BRZON

22

23 DATE: April 3, 2012

24

25 TIME: 8:10 a.m.

PLACE: 1221 N Street, Lincoln, Nebraska

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22

23 ALSO PRESENT: Donna Ormerod, Scott Ross, Brian
Dunnigan, Jim Schneider, Thomas Riley, Jasper Fanning,
24 Blake Johnson, Marc Groff and Jesse Bradley

25

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1	I N D E X			
2	WITNESS:	Direct	Cross	Redirect
3	L. MICHAEL BRZON	4	85	86
4				
5	EXHIBITS:	Marked		
6	1 - Copy of subpoena		5	
7	2 - Notes of a meeting between Mr. Book and Mr. Brzon		24	
8	3 - Article	48		
9	4 - Article	52		
10	5 - Information from WIMAS database			67
11	6 - Subsidy records		69	
12	7 - Copy of a news release from the Kansas Department of Agriculture		72	
13	8 - Article from the Lincoln Journal Star			79
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1 L. MICHAEL BRZON,

2 Of lawful age, being first duly cautioned and

3 solemnly sworn as hereinafter certified, was examined

4 and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. WILMOTH:

8 Q. Good morning, Mr. Brzon.

9 A. Morning.

10 Q. I think you probably gathered this, but my name

11 is Tom Wilmoth. I'm counsel for the State of

12 Nebraska. To my right is Justin Lavene, who is with

13 the attorney general's office. I'll be doing the

14 questioning today.

15 And first of all, I want to thank you for

16 coming. I know that this is kind of an odd

17 proceeding, and it's not always easy to find time,

18 but we do appreciate it.

19 First of all, let me ask you to state and spell

20 your full name for the record.

21 A. My given full name is Loren Michael Brzon,

22 B-R-Z-O-N.

23 Q. And Mr. Brzon, before we proceed any further,

24 can you tell me if you're currently taking any

25 medication or suffering any ailment that would

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1 preclude you from testifying today?

2 A. No, I'm not.

3 Q. Very good.

4 (Exhibit No. 1, marked for identification.)

5 Q. I'm going to hand you a copy of the subpoena and
6 ask you if you've seen this document before? We sent
7 this through Mr. Draper to you.

8 A. Yes.

9 Q. And have you brought with you today any
10 materials in response to that document, documents, as
11 hard copy materials?

12 A. No.

13 Q. Thank you.

14 So with the preliminaries out of the way,
15 Mr. Brzon, how did you get caught up in this mess?

16 A. I guess from the fact that I farm and live in
17 the Republican River basin.

18 Q. Where precisely do you farm?

19 A. I farm northwest of Republic and southwest of
20 Republic.

21 Q. And in your operation, do you rely on surface
22 water rights?

23 A. Yes.

24 Q. And what is the source of those rights?

25 A. The Kansas Division of Water Resources.

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- 1 Q. What is the physical source?
- 2 A. The Republican River.
- 3 Q. Do you divert directly from the river?
- 4 A. Yes.
- 5 Q. Is it a private diversion?
- 6 A. Yes.
- 7 Q. How many diversions do you have?
- 8 A. Counting our landlords, we operate about five.
- 9 Let me think a minute here.
- 10 I think there is four surface water permits.
- 11 Q. What are the names of your landlords?
- 12 A. LMS Holdings.
- 13 Q. L and S?
- 14 A. LMS.
- 15 Q. LMS?
- 16 A. Yes.
- 17 Q. Lincoln, Mary, savage?
- 18 A. Yes, uh-huh.
- 19 Q. Do you have any ownership interest in that
- 20 entity?
- 21 A. No.
- 22 Q. Is that the only landlord?
- 23 A. No, Faulkner Trust.
- 24 Q. Could you spell that for me.
- 25 A. F-A-U-L-K-N-E-R.

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1 Q. Any others?

2 A. As far as landlords that hold surface grants?

3 Q. Yeah.

4 A. Myself.

5 Q. Surface water rights?

6 A. Yes, myself and Brian Brzon, which is a brother.

7 Q. Do you hold those as joint tenants?

8 A. Yes.

9 Q. So if I understand you correctly, there are

10 three entities that hold four surface water permits?

11 A. Yes.

12 Q. Issued by the State of Kansas?

13 A. Yes.

14 Q. All of which have listed as their source the

15 Republican River?

16 A. Yes.

17 Q. And do you receive any water from any irrigation

18 districts?

19 A. Yes.

20 Q. Could you list those districts for me, please.

21 A. Kansas Bostwick Irrigation District.

22 Q. And is that water received under one of those

23 four permits or is that a different right?

24 A. That's a different right.

25 Q. Could you tell me how many rights you hold

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1 within the Kansas Bostwick Irrigation District, what

2 I'll call KBID for the record?

3 A. Okay. Actually those rights for KBID actually

4 go with the real estate holding, so there would be

5 probably -- each landowner actually has that right of

6 the KBID water holding, so where there would be

7 approximately -- well, let me think. Probably four

8 holdings.

9 Q. Could you list those for me?

10 A. It would be Loren Michael Brzon and Brian Brzon,

11 would also be LMS Holdings and --

12 Q. These are the same entities?

13 A. Yes, same, and Faulkner Trust.

14 Q. So collectively between the entities and

15 yourself and your brother, do I understand that you

16 hold eight total surface water permits?

17 A. Actually, the KBID holds the permit for the

18 landowner.

19 Q. So the individual landowners do not possess

20 permits from the state?

21 A. I'm not sure how that actually does work.

22 Q. As far as you know, though, there are four

23 surface water permits from the Republican River and a

24 series of diversion rights through the district --

25 A. Yes.

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1 Q. -- correct.

2 Are those entities that you listed earlier all
3 of the entities in which you have some interest in
4 Republican River basin or do you have any other
5 entities, such as partnerships, LLCs, corporate
6 entities, that have an interest?

7 A. Those are the -- those are the holdings there of
8 the interest.

9 Q. Do any of these entities have subsidiaries or
10 members?

11 A. Members as in?

12 Q. Well, for example, the holding company, who are
13 the owners of the holding company?

14 A. Private individuals.

15 Q. Can you list those for me.

16 A. Ed Sims and Jeanette Sims. Well, Janette Sims
17 Sheets.

18 Q. And collectively they own a hundred percent of
19 LMS?

20 A. Yes.

21 Q. Do you have any familial relation with them?

22 A. They're my landlord.

23 Q. They're not family, though?

24 A. No.

25 Q. How about the Faulkner Trust, who is the trustee

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- 1 and beneficiary of that trust?
- 2 A. Lala, Susan Lala, L-A-L-A.
- 3 Q. Is she the beneficiary?
- 4 A. Yes.
- 5 Q. Is the bank the trustee, or do you know?
- 6 A. No, I'm not sure who the trustee is there.
- 7 Q. Do you have any direct interest in Faulkner
- 8 Trust?
- 9 A. As -- no.
- 10 Q. Just as lessee?
- 11 A. As the tenant.
- 12 Q. How many acres do you farm under lease from LMS
- 13 Holding Company?
- 14 A. Hum, I don't have that number right in front of
- 15 me.
- 16 Q. How about the Faulkner Trust, same question?
- 17 A. Probably close to 500 acres there.
- 18 Q. Would you guess LMS is more or less than that?
- 19 A. It would probably be close to that.
- 20 Q. How many acres do you and your brother own and
- 21 farm? Did I get that right, you own as joint
- 22 tenants --
- 23 A. Yes.
- 24 Q. -- a certain number amount of ground?
- 25 A. Uh-huh. In the basin or out?

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1 Q. In the Republican River basin.

2 A. Be about -- about 400 acres.

3 Q. So this roughly 14-, 1500 acres, is that the

4 total amount of ground that you farm?

5 A. Yes.

6 Q. Either under lease or through direct ownership

7 in the basin?

8 A. In the basin, yes.

9 Q. And how about outside the basin, how much ground

10 are you farming?

11 A. Probably another 1200 acres, maybe, close to it.

12 Q. Is that all in Kansas?

13 A. Yes.

14 Q. Which river basin is that located in?

15 A. Some of its drainage goes to the Republican,

16 some of it would go to the Blue probably.

17 Q. So nothing in western Kansas?

18 A. No.

19 Q. Now, when I asked you earlier about the four

20 independent surface water permits, we distinguished

21 those from the KBID rights, correct?

22 A. (Witness nods.)

23 Q. If you could just affirmatively state.

24 A. Yes.

25 Q. With regard to the 1400 or so acres that we

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1 discussed, do all of those rights apply to those

2 1400 acres or are all of those 1400 within KBID,

3 served under the KBID rights or what's the

4 distribution of those water rights on those acres?

5 A. For each -- for each landowner?

6 Q. Yes.

7 A. For surface rights, there would approximately be

8 probably 140 acres of the -- for LMS.

9 Q. 140 acres under KBID?

10 A. Under the surface permit.

11 Q. Under the independent permits?

12 A. Uh-huh.

13 Q. Thank you.

14 A. And for Brian and Mike Brzon, there would

15 approximately be 80 acres, probably, and Faulkner

16 Trust, there would be another 80 acres.

17 Q. And the balance is irrigated with KBID water?

18 A. Yes. I guess I did make a mistake earlier.

19 There should be five river surface permits, I guess,

20 I'll correct that.

21 Q. That's fine.

22 Is there an additional entity or?

23 A. Yes, there would be. The landowner of that is

24 Bonnie and Leroy Elliott.

25 Q. And how much ground do you farm, under lease, I

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1 assume --

2 A. Yes.

3 Q. -- to them?

4 A. And they would also have about 80 acres under a
5 surface water permit.

6 Q. And how many total acres do you farm under lease
7 for them?

8 A. About right at 200.

9 Q. So we talked a little bit about surface water
10 rights. Now let's talk about groundwater. Can you
11 tell me if any of those entities hold groundwater
12 rights?

13 A. Yes, Brian and Mike Brzon or -- we hold a
14 groundwater right and also LMS holds groundwater
15 rights.

16 Q. And do you irrigate with your groundwater?

17 A. Yes.

18 Q. About how many acres?

19 A. Probably about 400 acres.

20 Q. Is that part of the 400 that you identified
21 earlier, in other words, are these all commingled
22 acres?

23 A. I'm sorry?

24 Q. Are these all acres that receive both surface
25 water and groundwater?

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1 A. No, these just receive surface water or
2 groundwater.

3 Q. So basically, these are 400 acres in addition to
4 the 400 acres --

5 A. Right.

6 Q. -- that you irrigated with surface --

7 A. Some of them are outside the basin, some of them
8 are in the basin.

9 Q. About how many acres are in the Republican
10 basin?

11 A. That would be -- with the groundwater rights,
12 there would be probably 160 acres in the basin, and
13 outside the basin, there would be probably 200 acres.

14 Q. And do any of your lands in the basin receive
15 both surface water and groundwater irrigation?

16 A. Yes.

17 Q. Is it the same 160 or?

18 A. Yes, it would be corresponding acres.

19 Q. And now, you mentioned LMS has some groundwater
20 rights, also. Do you know much about those?

21 A. Yes.

22 Q. Do you know how many they have?

23 A. How many acres?

24 Q. How many rights do they have?

25 A. Oh, they would have two, two rights.

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1 Q. And how many acres --

2 A. I'm sorry, there would be three rights,

3 actually.

4 Q. And how many acres does that serve, in the

5 basin?

6 A. I include -- oh, I included that in some of

7 those other acres that were outside the basin, but

8 LMS would have -- in the basin?

9 Q. In the basin.

10 A. They would have acres?

11 Q. Yes.

12 A. Probably about 180 acres, 190, somewhere in that

13 neighborhood.

14 Q. And are these in addition to the 500 that we

15 identified as surface water irrigated acres or are

16 these served both by surface water irrigation and

17 groundwater irrigation?

18 A. Those are just groundwater.

19 Q. How about the Faulkner Trust, do they hold any

20 groundwater rights?

21 A. No.

22 Q. And Bonnie and Leroy Elliott?

23 A. No.

24 Q. Don't hold any?

25 A. No.

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1 Q. Could you tell me a little bit about the terms
2 of your leases with these folks, specifically let's
3 start with LMS, what are the general terms of those
4 leases? Is that just a cash rent deal or do you --

5 A. It's share.

6 Q. Sharecrop?

7 A. Uh-huh.

8 Q. And what are the percentages on that, what's the
9 division?

10 A. On the irrigated, is 50/50. On the dry land,
11 it's 60/40.

12 Q. 60 to the lessor or 60 to the lessee?

13 A. Yes, the lessee.

14 Q. And is the same true of your lease with the
15 Faulkner Trust?

16 A. It is a 60/40 lease with them, straight through
17 on irrigated dry -- on dry land both.

18 Q. Same deal, 60 to the lessee?

19 A. (Witness nods.)

20 Q. And the Elliotts, same --

21 A. That's a cash rent.

22 Q. That's a cash rent?

23 A. Uh-huh.

24 Q. And what do you pay for that in rent?

25 A. I would rather not put that on the record if I

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1 had to, if this is going to be public knowledge.

2 MR. DRAPER: Can we -- I don't
3 think I have a problem with sharing that
4 information unless we can keep it confidential
5 for the convenience of the --

6 THE WITNESS: I mean, even my
7 share agreements, those are all very
8 aggressively -- competition in the farming world
9 is tremendous anymore.

10 MR. WILMOTH: Why don't we go off
11 the record for a moment.

12 (Discussion off the record.)

13 MR. DRAPER: So I think we've
14 agreed we'll hold this deposition confidential
15 until further agreement or --

16 MR. WILMOTH: I think we agreed to
17 revisit that issue and we'll address the
18 confidentiality of that at a later time, but for
19 now, the deposition is -- remains open, was my
20 understanding.

21 MR. DRAPER: Well, to the extent
22 that we're allowed to keep it confidential under
23 the CMP, we ask that that be done.

24 MR. WILMOTH: The entire
25 deposition?

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1 MR. DRAPER: Yes, for the time
2 being. I think we can work out, there are only
3 certain parts that are going to be sensitive, so
4 we can work that out. But I think until we do
5 figure out just how it should sort out, that
6 is --

7 THE WITNESS: I'm not too worried
8 about the acres, I'm concerned about the share
9 rental agreements and any cash rental agreements
10 I would have, my relationship with my landlords.

11 MR. WILMOTH: Well, if we're
12 keeping the entire deposition in confidence,
13 then I need an answer to my question. There is
14 no reason to revisit it.

15 MR. DRAPER: Right. Okay. So as
16 long as we're agreed that it will be in
17 confidence until we agree otherwise or if
18 necessary, an order of the special master, as
19 long as we're agreed on that, then we can go
20 ahead. He can answer the questions, and then we
21 can go back and I think we would probably figure
22 out just how to take care of the sensitive
23 parts.

24 MR. BLANKENAU: I think that's an
25 accommodation -- just to be clear, I think he

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1 has to answer the question with or without an
2 agreement, but we're willing to accommodate you
3 in this instance.

4 MR. DRAPER: Okay. I appreciate
5 the accommodation that -- well, it will remain
6 confidential, the entire deposition.

7 A. I also have a verbal agreement with my landlord
8 on that he would not divulge cash rental agreements
9 and I would not divulge cash rental agreements.

10 Q. (BY MR. WILMOTH) Well, short of a protective
11 order, I don't know what to tell you, Mr. Brzon. I
12 need to know what you're paying in cash rent.

13 MR. DRAPER: We've agreed that it
14 will be confidential and there are
15 confidentiality provisions in our case
16 management plan, and I think we will plan to
17 work it out with Nebraska to keep this
18 confidential.

19 THE WITNESS: Okay.

20 MR. DRAPER: So please go ahead
21 and answer the question.

22 A. Approximately \$150 an acre.

23 Q. Does that include the access to water?

24 A. Yes.

25 Q. Are you responsible for all of their inputs

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1 essentially or do you share in any of those?

2 A. On the cash rental agreement, we take care of

3 all the inputs, labor and everything.

4 Q. What is the term of that lease, is that an

5 annual lease?

6 A. Yes.

7 Q. And is it subject to a renewal period or

8 anything?

9 A. Yes.

10 Q. How long have you held that lease?

11 A. Oh, gosh, probably over 10 years.

12 Q. Has the rent changed over those 10 years?

13 A. Yes.

14 Q. How has it changed?

15 A. It's gone up.

16 Q. What did it begin at?

17 A. About 125 an acre.

18 Q. In about 2002 then?

19 A. Yes.

20 Q. Is that land served by KBID?

21 A. Partial.

22 Q. And who pays the O&M costs on that water?

23 A. I reimburse the landowner for it.

24 Q. Do you rent any of your ground to any third

25 parties, the ground that you own? For farming

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1 purposes, excuse me?

2 A. We -- my brother and I operate it all.

3 Q. You don't have a lessee, a renter?

4 A. We are the renter, I rent it.

5 Q. Oh, I see. You rent it back from yourselves?

6 A. Right, uh-huh.

7 Q. Okay, I understand. Thank you.

8 What are the terms of that agreement, is that a
9 cash rent deal?

10 A. Yes.

11 Q. And what are the terms, what is the price?

12 A. We pay all the expenses of the landowner.

13 Q. So there is no -- there is no rental payment,
14 whatever the expenses are --

15 A. Right.

16 Q. -- get paid?

17 A. Uh-huh.

18 Q. Is that an annual lease?

19 A. No.

20 Q. What is the term of that lease?

21 A. Well, I mean, it's an ongoing, it's -- it's...

22 Q. There is no expiration?

23 A. Right, yes.

24 Q. Mr. Brzon, when did the State of Kansas first
25 contact you to appear as a witness in this case?

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1 A. Oh, probably -- it's probably been three, four
2 weeks ago, maybe.

3 Q. And who made that contact?

4 A. I think Chris actually made the initial contact.

5 Q. And what were you told by Mr. Grunewald about
6 your service as a witness?

7 A. If I would be willing to be a witness for the
8 State of Kansas.

9 Q. Did Mr. Grunewald indicate what they were
10 expecting you to testify to?

11 A. Just to answer the questions that were
12 presented.

13 Q. Have you had any subsequent meetings with
14 Mr. Grunewald or any other member of the Kansas legal
15 team?

16 A. Yes.

17 Q. Could you tell me when those occurred?

18 A. We visited on the phone a little bit and we had
19 supper last night.

20 Q. Where did you eat?

21 A. Misty's.

22 Q. Good. At least you got a good meal out of this
23 deal.

24 A. Yeah.

25 Q. I hope you ordered a nice bottle of wine on my

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1 bill.

2 A. Well, I paid for mine.

3 Q. On your phone visits that you mentioned, who was

4 present?

5 A. I think Chris and John. And Burke, were you

6 present also?

7 MR. GRIGGS: (Counsel nods.)

8 A. And Scott.

9 Q. (BY MR. WILMOTH) Were you asked to provide any

10 information to those individuals?

11 A. No.

12 Q. Did they provide you any information?

13 A. No.

14 Q. Have you reviewed any of the expert reports

15 prepared by the State of Kansas in this litigation?

16 A. No, I haven't.

17 Q. Did you participate in developing any of those

18 reports?

19 A. No.

20 Q. Didn't have any meetings with any of the Kansas

21 experts?

22 A. As -- expert as in whom?

23 Q. Well, let's see, Mr. Perkins, Mr. Larson,

24 Mr. Book, Mr. -- who am I forgetting? Hamilton,

25 Mr. Robison, any of those folks?

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1 A. No.

2 Q. Mr. Barkley?

3 A. I know David.

4 Q. Didn't have a meeting with him about this?

5 A. No.

6 Q. Mr. Brzon, I'm going to hand you some
7 information we obtained from Mr. Book, and I
8 understand we'll mark this as Exhibit 2.

9 (Exhibit No. 2, marked for identification.)

10 Q. I understand from Mr. Book that these are notes
11 of a meeting that he attended with what appears to be
12 yourself, does this ring a bell? I can't tell you
13 when it would have occurred but...

14 A. Trying to think who he is even. What is his
15 title?

16 Q. Mr. Book provides some expert services to the
17 State of Kansas in this litigation.

18 A. There is no date on this?

19 Q. I'm afraid not.

20 A. I kind of remember visiting with somebody that
21 was going through doing a survey, if this has
22 anything to do with it.

23 Q. When did that occur?

24 A. I have no idea. Were these the economists?

25 Q. I hesitate to characterize Mr. Book in any

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1 particular way. He's a renaissance man, let's leave

2 it at that.

3 A. Seems like there were -- somebody that went

4 through doing a survey and I failed to even remember

5 who they were, yeah.

6 Q. Do you remember if it was a man or a woman?

7 A. Pretty sure it was a man, maybe several, several

8 of them maybe.

9 Q. And do you recall when the survey was conducted?

10 A. No, I don't.

11 Q. Do you think it was in the last five years?

12 A. Gosh, I don't remember.

13 Q. Do you remember what the purpose of the survey

14 was?

15 A. Other than a survey on the basin, is the only

16 thing I can remember.

17 Q. You don't remember conveying any particular

18 information to the surveyor, though; is that right?

19 A. No, I don't.

20 Q. All right. Let me ask you generally, Mr. Brzon,

21 what is the substance of your expected testimony?

22 A. Depends on the questions.

23 Q. Fair enough.

24 MR. DRAPER: I -- Tom, for your

25 information, we generally expect him to provide

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1 testimony describing his farming operations in
2 and near KBID and the basin.

3 MR. WILMOTH: Thank you. Why
4 don't we take a five-minute break.

5 (Recess was taken.)

6 Q. (BY MR. WILMOTH) Mr. Brzon, I want to return to
7 this cash rent and explore this structure a little
8 bit.

9 MR. DRAPER: Tom, I might mention,
10 we took a bit of a look at the case management
11 plan over the break.

12 MR. WILMOTH: Oh, good.

13 MR. DRAPER: And I think it very
14 expertly takes care of these types of
15 situations. We need to talk about the details,
16 but basically all depositions are confidential
17 for 10 days, and then we can make a designation.
18 Everybody who is present is bound by the
19 designation.

20 MR. WILMOTH: Okay.

21 MR. DRAPER: And what I would
22 anticipate is we would just go in and pick out
23 the particularly sensitive parts and designate
24 those, and the rest of it would be available --

25 MR. WILMOTH: Sure, that sounds

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1 fine.

2 MR. DRAPER: -- to the public.

3 And also, we haven't been making
4 stipulations, as the court reporter mentioned at
5 the beginning, I think since it's a U.S. Supreme
6 Court case, we're covered by the CMP and we
7 don't need any extra stipulations.

8 MR. WILMOTH: I agree.

9 Q. (BY MR. WILMOTH) So Mr. Brzon, tell me how this
10 \$150 per acre figure was arrived at. Is that a --
11 basically a blended rate or is your lease broken down
12 between dry land and irrigated acres?

13 A. It's straight through.

14 Q. How was the 150 arrived at?

15 A. That's what the landlord requested.

16 Q. And is all of the ground under that lease dry
17 land or irrigated?

18 A. Some of it's dry land, some of it's irrigated.

19 Q. How much is dry land percentagewise?

20 A. Very small portion.

21 Q. So the 150 is -- excuse me, the majority of the
22 ground under the lease is irrigated ground?

23 A. Yes.

24 Q. And is that irrigated with surface water or
25 groundwater?

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1 A. Surface.

2 Q. Entirely?

3 A. Yes.

4 Q. In your experience, how does that rental value
5 relate to the broader market in KBID?

6 A. At present?

7 Q. Certainly, let's start there.

8 A. It's probably on the lower side.

9 Q. Why do you suppose that is?

10 A. Because the unreliability of the water.

11 Q. Are the other arrangements not subject to that
12 same uncertainty?

13 A. I don't know.

14 Q. What was the market like back in '05 and '06, in
15 your recollection?

16 A. As far as the cash rent market?

17 Q. Yes, sir.

18 A. It would probably been pretty close to where
19 we're at now.

20 Q. So you're getting a pretty good deal, it sounds
21 like?

22 A. At the present.

23 Q. So --

24 A. Those ties have been built over the years.

25 Q. So if I understand you correctly, based on your

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1 previous answers, both yourself and others would have
2 been paying somewhere between \$125 and \$150 an acre
3 on a cash rent basis for irrigated ground in '05 and
4 '06?

5 A. Everybody has different arrangements, but I
6 would say that might be the ballpark. It's hard to
7 say really. I mean, all -- all landlords and tenants
8 are -- all kinds of agreements.

9 Q. What's the lowest number you've ever heard in
10 the last 10 years for irrigated ground?

11 A. In the last 10 years?

12 Q. Yes, sir.

13 A. So that would be back in 2002?

14 Q. Between 2002 and today.

15 A. Probably \$100 an acre, probably, I don't really
16 know.

17 Q. What's the highest?

18 A. To the present?

19 Q. Yes, sir.

20 A. In our area, the highest I heard is probably
21 250.

22 Q. What's the basis of that disparity, in your
23 view?

24 A. Soil type and reliability of water.

25 Q. Do the soil types vary greatly across the

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1 district?

2 A. In the lower basin, yes.

3 Q. And are some users insulated from the

4 uncertainty of the water supply?

5 A. Depends on where they're located within the

6 basin and the district.

7 Q. What is it that provides them that insurance, if

8 you will?

9 A. If you're in the lower part of KBID, below White

10 Rock or below Lovewell, you have a better reliability

11 of water.

12 Q. And so are lease values generally higher in

13 lower KBID?

14 A. Yes.

15 Q. And they're lower in upper KBID?

16 A. Yes.

17 Q. Have you seen a significant change in lease

18 rental rates since 2006?

19 A. All across the farming community, there has

20 been, yes.

21 Q. And I just am focusing, obviously, on the

22 Republican River basin. Can you tell me what the

23 nature of those changes are?

24 A. As far as?

25 Q. Pricing.

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1 A. Prices of cash rent?

2 Q. Yes, sir.

3 A. Just from the commodity prices mainly.

4 Q. So are the rents going up?

5 A. Yes.

6 Q. And that's a reflection of commodity prices

7 going up; is that what you're suggesting?

8 A. That and -- yes.

9 Q. Anything else causing those rents to go up?

10 A. Oh, I think the availability of water is always

11 a concern.

12 Q. I'm not understanding something, I think. Let

13 me ask you, why would the uncertainty associated with

14 water supply increase cash rents?

15 A. The availability of water would increase cash

16 rents.

17 Q. Okay. So rents are going up because water

18 supplies are higher?

19 A. Yes.

20 Q. Okay. Thank you.

21 When are those leases typically negotiated, what

22 time of year?

23 A. Notifications have to be made 30 days before

24 February 1.

25 Q. So they are entered -- for all intents and

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1 purposes, entered on or before January 30th?

2 A. Uh-huh, yes.

3 Q. And on January 30th or in that vicinity, how do
4 you know what the water supply will be in KBID, for
5 example?

6 A. In KBID, they usually notify us the potential of
7 water supply just from the lake levels.

8 Q. The first part of the year?

9 A. Yes.

10 Q. And what does that notification typically
11 include?

12 A. Usually a newsletter or a direct mailing.

13 Q. And what would be the typical content of that
14 mailing, just the lake levels look good, looks like
15 we're going to have a good year?

16 A. Inflows into the lakes and that type.

17 Q. Or vice versa?

18 A. Yes.

19 Q. Is that the only notification you receive about
20 water supplies during the year?

21 A. As far as KBID, it's basically ongoing
22 information. If it looks like it's going to be a
23 short year, they usually do meetings or mailings to
24 keep the producers informed.

25 Q. So as a producer, if you see notification of a

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1 potential water short condition, how do you react to
2 that?

3 A. Well, we have to be prepared to be flexible and
4 roll the dice on what type of supply and potential
5 rainfall will be.

6 Q. And when you say remain flexible, does that mean
7 with regard to your input purchases, for example?

8 A. Right, and cropping practices.

9 Q. When do you typically make your decisions on
10 input purchases?

11 A. A lot of times --

12 Q. Do you wait, for example, until you hear about
13 this water supply situation?

14 A. Not necessarily. A lot of times our seed and
15 fertilizer have to be preordered, oh, in some years
16 as early as September, October.

17 Q. For the following year?

18 A. Right, yes.

19 Q. How about your other inputs?

20 A. Those usually go on through the winter months as
21 far as other inputs, as far as diesel and that type.

22 Q. And with regard to your cropping practices,
23 could you elaborate a little bit for me what you mean
24 by that term, are you talking about --

25 A. Rotations, rotations mainly and if there is

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1 going to be -- have to be a cover crop planted on a
2 irrigated ground because of water supply or something
3 like that for a cover crop be the main thing.

4 Q. Cover crop on dry land ground?

5 A. On irrigated ground, if there is no water
6 supply.

7 Q. I see.

8 What about your decisions to enroll in federal
9 programs, preventive planning payment programs, for
10 example, when do you make those decisions?

11 A. There is a certain deadline that those have to
12 be made by on crop insurance and through the FSA
13 office.

14 Q. Do you know what that deadline is?

15 A. No, I'm not for sure on when those actual
16 deadline dates are.

17 Q. With regard to your purchase of inputs, you
18 mentioned some of these are purchased prior to the
19 end of the year, is any of that for tax planning
20 purposes?

21 A. Not necessarily, all kind of depends on the
22 marketing plan and the supply.

23 Q. So it's variable depending on what your
24 objectives are?

25 A. Yes.

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- 1 Q. So let me take you back to 2005, 2006, I
2 understand from the history of this case, that there
3 was some water shortages in KBID. How did you react
4 to those specifically?
- 5 A. There was a number of years we used preventive
6 planning and changed our crop rotations.
- 7 Q. How did your crop rotations change?
- 8 A. We planted more wheat on irrigated acres and
9 soybeans rather than corn.
- 10 Q. Did you plant any dry land corn?
- 11 A. Oh, I'm sure there was probably some.
- 12 Q. Any other dry land crops?
- 13 A. Any other crops?
- 14 Q. Did you plant any other dry land crops?
- 15 A. Wheat would have been a dry land crop on some
16 farms and might have been some sorghum planted maybe.
- 17 Q. Did you undertake any conservation measures?
- 18 A. We do every year.
- 19 Q. Anything out of the ordinary in '05 or '06?
- 20 A. Probably as far as conservation is soil, water,
21 what are you?
- 22 Q. Both.
- 23 A. I'm sure we had cover crop planted, and probably
24 on our rotations, I'm sure we left an ex -- probably
25 extra. Our farming practices have changed in the

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1 last 10 years quite a little bit, I mean, as far as

2 strip till over minimum till.

3 Q. Why don't we talk about that. How have your

4 practices changed since 2002? Let's start with what

5 they looked like in '02. And for the sake of these

6 line of questioning, let's just talk generally about

7 your -- your ground that you're owning and --

8 A. Uh-huh, okay.

9 Q. -- leasing back to yourself and, you know, if

10 there are more specifics that you need to elaborate

11 on, that's fine, but for purposes of my next few

12 questions, let's just focus on that ground.

13 A. Okay.

14 Q. How do your operations differ today from what

15 they were in '02?

16 A. We probably -- at the present, we probably do a

17 lot more minimal tillage.

18 Q. Minimal tillage?

19 A. Uh-huh.

20 Q. What's the purpose of that practice?

21 A. To leave more residue on top of the soil.

22 Q. Does that have a water conservation benefit?

23 A. It increases -- or it helps to decrease soil

24 erosion and hopefully retains moisture.

25 Q. Any other changes?

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1 A. No, probably not in our operation.

2 Q. No change in the irrigation delivery
3 infrastructure or conversion to center pivots, for
4 example?

5 A. Yes, there have been quite a few changes there
6 as far as investments, in not only gated pipe but
7 sprinkler systems and buried pipe.

8 Q. Have you converted to center pivot technology
9 or?

10 A. Wherever we can justify the cost.

11 Q. And have those activities related to additional
12 water conservation?

13 A. Yes.

14 Q. Any other farming practices of consequence that
15 have changed in the last decade?

16 A. Not that I can recall.

17 Q. Have you had any significant shift in crop type,
18 for example, are you growing any more corn these days
19 or less corn or more wheat or less wheat?

20 A. No, we actually try to stay on a -- pretty much
21 of a rotational basis with corn and soybeans on
22 irrigated acres.

23 Q. How about your water use overall, have you
24 observed any change in the water use?

25 A. Depending on the seasons.

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1 Q. Depending on the seasons?

2 A. Well, depending on the rainfall amount that
3 we've had during the growing year.

4 Q. So if you get more rainfall, you use less
5 irrigation water?

6 A. Yes. If it comes in a timely fashion.

7 Q. What would be considered, in your view, a timely
8 fashion for, say, corn?

9 A. Be nice to have a inch of rain every 10 days
10 from June 1 to probably August 15th.

11 Q. That would be nice.

12 A. Oh, yeah, it would be, be ideal. It would be
13 like Iowa.

14 Q. Be like what, sorry?

15 When you find yourself requiring irrigation
16 water within KBID, how do you inform KBID of that
17 fact? How did you call for water, in other words?

18 A. We usually call the main office and order water
19 a day or 24 hours to 48 hours in advance, just kind
20 of depends on how their supplier is set up to
21 deliver.

22 Q. Are you ever told that the water's not
23 available?

24 A. Yes.

25 Q. Under what condition?

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1 A. Under the conditions that most of our delivery

2 points are at the end of the irrigation canals.

3 Q. So there is just not enough water down there?

4 A. Right.

5 Q. I see.

6 Have you ever ordered water and then elected not

7 to take it due to a precipitation event?

8 A. Possibly.

9 Q. And what happens to that water at that time?

10 A. If they don't divert it and their canal is full

11 at the tail end, it is returned to the river flow.

12 Q. So it just passes through the system?

13 A. Yes, uh-huh.

14 Q. Do you recall that happening in '05 or '06?

15 A. No, I don't. I'm not for sure if we even

16 charged our canals in those two years.

17 Q. Okay. Did you take any deliveries, you don't

18 know?

19 A. I'm not for sure if we did or not at that time,

20 in those two years.

21 Q. Okay. Did you engage in any irrigated

22 agriculture in those two years?

23 A. Yes.

24 Q. Where?

25 A. I'm sure we woulda irrigated some in the basin.

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1 Q. Outside of KBID?

2 A. And par -- partial of KBID, below White Rock.

3 Q. Okay. I might have asked you this, and I

4 apologize if I've forgotten the answer, but do you

5 have -- you have groundwater rights, how many wells

6 do you own?

7 A. In the basin or?

8 Q. Yes, sir.

9 A. That I own?

10 Q. Yes, sir.

11 A. Just one.

12 Q. Is that well outside of KBID or inside?

13 A. Outside of KBID.

14 Q. What's the capacity of that well?

15 A. Oh, about 400 gallons a minute.

16 Q. And how far from KBID is that well located?

17 A. As far as?

18 Q. Just as the crow flies, miles?

19 A. From their delivery points or?

20 Q. From KBID's exterior boundary, the boundary --

21 A. It is within the boundary.

22 Q. It is within the boundary?

23 A. Uh-huh.

24 Q. Okay. And does that well serve, I think you

25 said 80 acres?

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1 A. Yeah, I think there is approximately 80 acres in
2 it.

3 Q. Do you recall operating that well in '05 and
4 '06?

5 A. Yes, I think so.

6 Q. Do you recall whether you utilized that well to
7 its full capacity, in other words, did you irrigate
8 the entire 80 acres?

9 A. As far as I can remember, we probably did.

10 Q. With whom do you typically interact at KBID?

11 A. If we call in to order water, it's whoever
12 answers the phone at KBID.

13 Q. Do you ever interact with Mr. Nelson?

14 A. Yes.

15 Q. What is the nature of your relationship with
16 Mr. Nelson?

17 A. I've known him probably most of my life.

18 Q. Do you consider him a good manager of the
19 district?

20 A. Yes.

21 Q. Do you typically agree with his water management
22 decisions?

23 A. Not always.

24 Q. Did you agree with the decision to leave water
25 in Harlan County Lake in '05?

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1 A. I can't really remember on that.

2 Q. Do you know whether the State of Kansas ever
3 purchases water for fish and wildlife purposes in
4 Harlan County?

5 A. Okay. Ask me that again, please.

6 Q. Do you know whether the State of Kansas ever
7 purchases water in Harlan County Lake for fish and
8 wildlife purposes?

9 A. Not that I'm aware of.

10 Q. Let's walk through some of the easy stuff now,
11 Mr. Brzon.

12 Could you just describe your personal
13 background, are you from the area?

14 A. Yes, I grew up northwest of Belleville and began
15 farming with my father and mother, and I've always --
16 actually, I grew up in the Republic area actually, I
17 went to high school at Republic.

18 Q. Do you still live there now?

19 A. I live southwest of Republic.

20 Q. And you say you farm with your brother, do you
21 have any other folks in the family that are farming
22 with you?

23 A. I have another brother that is also involved.

24 Q. And could you tell me his name, please?

25 A. Darrell Brzon.

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1 Q. Is that D-A-R-Y-L?

2 A. D-A-R-R-E-L-L.

3 Q. Does Darrell have any ownership interest in your
4 farms?

5 A. No.

6 Q. And did you attend university in Kansas?

7 A. I went to Cloud County Community College.

8 Q. Cloud County.

9 Did you have any particular line of study there
10 that you focused on?

11 A. Agriculture.

12 Q. Did you obtain any degrees in agriculture?

13 A. I think it was a associate of science degree,
14 actually.

15 Q. Did you have any particular emphasis other
16 than -- within the agricultural area?

17 A. No, it was pretty general agriculture.

18 Q. Any additional education?

19 A. Just continuing ed classes, some were through K
20 State and just whatever I can learn on the go.

21 Q. Does K State operate a research center on one of
22 your farms?

23 A. Not on one of my farms.

24 Q. Are you actively involved in any research by K
25 State?

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1 A. Not at the present.

2 Q. Have you been before?

3 A. Yes.

4 Q. What was the nature of that work?

5 A. I think they have done some fertilizer studies

6 on some of our property in the past.

7 Q. What was the outcome of that research, do you

8 recall?

9 A. No, I don't. That's been a number of years ago.

10 Q. Do you hold any professional licenses, such as

11 an engineering license or anything?

12 A. No.

13 Q. Are you or have you ever been a consultant for

14 the State of Kansas in any regard?

15 A. No.

16 Q. Are you being compensated today by the State of

17 Kansas for your testimony?

18 A. Hopefully.

19 Q. Travel expenses?

20 A. Yes.

21 Q. At least?

22 A. Uh-huh.

23 Q. Okay. Any other compensation that you're aware

24 of?

25 A. Not at this time.

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1 Q. Okay. If I understand correctly, you were a

2 member of the Farmway Co-op; is that correct?

3 A. Yes, in the past, I've been a board member.

4 Q. Could you explain to me how the co-op operates.

5 A. They're a farmer-owned retail supplier of

6 agricultural products and grain facility.

7 Q. And you mentioned you serve on the board?

8 A. I did in the past.

9 Q. Have you had any other positions with that

10 organization?

11 A. No.

12 Q. When were you serving on the board?

13 A. Probably, I think, if I remember right, when I

14 went off the board, I had served for like 12 years on

15 the board or something like that.

16 Q. Do you remember when you rotated off?

17 A. Just probably about a year ago, actually.

18 Q. And do you participate on the U.S. Grains

19 Council, does that sound familiar?

20 A. Yes.

21 Q. Could you describe your participation in that

22 organization?

23 A. I represent the State of Kansas corn growers.

24 Q. Do you represent the Kansas corn growers on the

25 grains council?

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1 A. Yes.

2 Q. Okay. And what is the grains council?

3 A. It's a -- an entity that promotes agricultural

4 exports.

5 Q. Exports to foreign countries?

6 A. Yes.

7 Q. So as the representative of the Kansas corn

8 growers, I assume you're promoting the export of

9 corn?

10 A. Yes.

11 Q. So in your capacity as the corn growers

12 representative, do you have occasion to go to

13 Washington, D.C.?

14 A. Not very often.

15 Q. Have you ever done so?

16 A. Once.

17 Q. What was the purpose of that visit?

18 A. It was a annual meeting for the U.S. Grains

19 Council.

20 Q. And do you -- do you have any role with regard

21 to the council's interaction with other entities?

22 A. Other entities as?

23 Q. Congress, for example.

24 A. No.

25 Q. Tell me a little bit about your participation on

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1 the Kansas Corn Commission, what is the purpose of
2 that entity?

3 A. Is to promote and -- promotion and research
4 entity for the Kansas corn growers.

5 Q. And what role do you serve?

6 A. At the present, I'm chairman.

7 Q. What do your duties entail?

8 A. To actually call meetings and oversee the
9 meeting dates, actually. Bring anything to -- on the
10 agenda that needs to be brought.

11 Q. Do you appear before the Kansas legislature?

12 A. Last year I gave an annual report to the Kansas
13 legislature.

14 Q. And what was the general nature of that report?

15 A. Just to inform them of what some of the projects
16 that the Kansas Corn Commission had funded and our
17 financial state.

18 Q. Does the commission receive any support from the
19 State of Kansas?

20 A. No.

21 Q. Financial?

22 A. No.

23 Q. How is it funded?

24 A. Through a check off of the Kansas corn
25 producers.

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1 Q. Do you conduct any lobbying activities on behalf
2 of that organization?

3 A. No.

4 Q. I'm going to hand you an article and ask you if
5 you recognize this.

6 (Exhibit No. 3, marked for identification.)

7 Q. Does this look familiar to you? Take a moment
8 and familiarize yourself with it, of course.

9 (Witness complies.)

10 Q. You're quoted in this article on a couple of
11 occasions, Mr. Brzon. Do you recall giving this
12 interview?

13 A. Yes.

14 Q. I would like to direct your attention to the
15 fourth paragraph. It's a quote, "I wish people would
16 look." Do you see that?

17 A. Yes.

18 Q. You mention in here advances in agriculture that
19 allow the cultivation of corn on fewer acres, and I
20 was curious if you could explain that?

21 A. Well, it all comes back to, if I remember right,
22 on the questioning or the -- relates to the
23 productivity on the per bushels per acre that are
24 produced now compared to in years past.

25 Q. What is the cause of that increased

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1 productivity?

2 A. Not only farming practices but the technology

3 and the hybrid seeds.

4 Q. Hybrid seeds?

5 A. Uh-huh.

6 Q. What do the hybrid seeds do to increase

7 productivity?

8 A. They're more insect resistant with the new

9 technology of the BT, biotech type of seeds, and just

10 a healthier plant overall as far as a hybrid.

11 Q. What are the water needs like compared to the

12 nonhybrid seeds?

13 A. Well, I don't know if there are any nonhybrid

14 seeds planted in the U.S. anymore.

15 Q. Okay.

16 A. Really, I...

17 Q. Sure. So do they use more or less water than

18 nonhybrid seeds?

19 A. Really, I -- I would assume since it's a

20 healthier plant that their needs maybe would be less,

21 but I can't really say on that.

22 Q. And you mention a reduction of fertilizers and

23 pesticides, is that also due to the integrity of

24 these hybrid seed?

25 A. To a certain extent, but I think it's the

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1 technologies that the farmers are using now as far as
2 fertilizer placement.

3 Q. How has that changed over the last 20 years?

4 A. I think farmer producers are more aware of the
5 needs of the plant and try to place the fertilizer in
6 a more appropriate manner for the plant. They use it
7 better.

8 Q. So there is less waste, for example?

9 A. Yes, uh-huh.

10 Q. Less runoff?

11 A. Yes, less cost.

12 Q. Less cost.

13 And that's true of both fertilizers and
14 pesticides?

15 A. Yes, uh-huh.

16 Q. And dropping down to the second to the last
17 paragraph here, there is another quote, "I don't
18 think people understand." Do you see that?

19 A. Uh-huh.

20 Q. You mentioned that technology has made things on
21 the ground much more efficient. Could you elaborate
22 on the technologies that you're referring to or are
23 they just what we discussed?

24 A. Pretty much what we discussed, as far as farming
25 practices.

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1 Q. Okay. How about water or soil conservation
2 practices, have those changed? I thought we talked a
3 little bit about your particular operation, but in
4 your capacity on the corn commission, are you aware
5 of broader changes within the Republican River basin
6 with regard to soil and water conservation?

7 A. Well, I think there's been a lot more concern
8 just due to the overall cost of any type of tillage
9 anymore.

10 Q. So more and more farmers are going to no-till
11 operations?

12 A. No till or strip till or minimal till.

13 Q. And are you seeing continued investment in
14 delivery technology, such as the gated pipe or the
15 underground pipe?

16 A. Yes.

17 Q. And center pivots?

18 A. Yes.

19 Q. And do you think that that has resulted in a
20 reduction in water demand?

21 A. In most cases, I would say yes.

22 Q. How much do you think your demand has been
23 reduced on your farm, by virtue of those practices?

24 A. Just by being more efficient with the water as
25 far as delivery and time that the water is on the

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1 ground, I don't know if I really can tell ya -- I'm
2 not really for sure how much more efficient we
3 actually are with the water delivery. I know there
4 is a lot of studies out there.

5 Q. I give you another article that we located here,
6 and just ask you to take a look at it, see if you can
7 identify it.

8 MR. WILMOTH: This will be Exhibit
9 4.

10 (Exhibit No. 4, marked for identification.)

11 Q. Do you recall granting that interview?

12 A. Yes.

13 Q. Down toward the bottom, second to the last
14 paragraph, there is a quote that begins "Once again."
15 Do you see that?

16 A. Yes.

17 Q. You're discussing there productivity and
18 environmental advances and various increases in
19 technology. Are those generally the types that we've
20 just discussed?

21 A. Yes.

22 Q. So is it your view that, overall, farmers are
23 doing better with less inputs, in other words, less
24 is being outlaid for fertilizers and various other
25 inputs and more productivity is being gained through

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1 advances in technology, is that the message of this
2 article?

3 A. Depends on what you classify as better, I guess,
4 in my thought.

5 Q. From a productivity standpoint.

6 A. Yes.

7 Q. Returning to your farm specifically or really
8 any of those that you farm, not just the farm that
9 you own but all the farms in which you operate, do
10 you have any nutrient management plans in play on
11 those farms?

12 A. We soil sample as needed.

13 Q. What are you sampling for?

14 A. All nutrients, micronutrients.

15 Q. How often do you conduct those samples?

16 A. We try to do it on a rotational basis, every
17 other year.

18 Q. Do you typically apply fertilizer in a single
19 application?

20 A. No.

21 Q. Multiple applications?

22 A. Yes.

23 Q. How many in a given season?

24 A. Oh, potentially several.

25 Q. And what's the reason for the multiple

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- 1 applications, is that just the stage of the plant
2 growth or is that an economic decision?
3 A. Some of both, actually.
4 Q. What is the economic goal?
5 A. If a guy -- if a person can purchase fertilizer
6 in the off see -- off season, meaning maybe a lot of
7 people apply fertilizer early before or preplant.
8 Q. Uh-huh.
9 A. We might have the opportunity to purchase
10 fertilizer later in the season and apply -- side
11 dress the corn crop or whatever crop it is.
12 Q. Do you apply the fertilizer through your
13 irrigation in structure -- infrastructure or do you
14 aerial spray or how do you --
15 A. Most of it's ground, ground applied.
16 Q. Excuse me, I meant to say pesticide and
17 fertilizers.
18 A. Ground applied.
19 Q. What do you find to be the benefit of crop
20 rotations?
21 A. Just the ease of management and the soil
22 fertility.
23 Q. What's your typical rotation?
24 A. On -- mostly corn, soybean rotation, on
25 irrigated ground.

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1 Q. Do you think that's representative of the
2 general area?

3 A. Yes, there is quite a little bit of rotation
4 going on but maybe not to that percentage.

5 Q. Do you plant any drought-tolerant or
6 drought-resistant seed?

7 A. We plan to this year.

8 Q. Why so?

9 A. Hopefully it will do as advertised and not
10 require maybe quite as much inputs.

11 Q. How long has that product been available?

12 A. Commercially, I think probably just in the last
13 several years.

14 Q. What are your expectations for that product when
15 you say as advertised?

16 A. Hopefully we can stabilize our yields with less
17 inputs.

18 Q. I think I asked you earlier about the extent to
19 which your infrastructure changes have resulted in
20 water conservation. If I recall, you weren't certain
21 about the answer to that question or at least the
22 degree.

23 I would like to ask you the same question about
24 your soil conservation practices with regard to the
25 no till, have you observed any marked improvement in

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1 your water use sufficiencies?

2 A. Our operation, we don't really do a true no
3 till, it's more of a minimum till or a rich till.

4 Q. Has it reduced evaporation, for example,
5 maintain soil moisture?

6 A. It's hard to quantify that, but we feel that it
7 has.

8 Q. When you select one of these crop rotations and
9 you're working through it, do you ever change that
10 decision during the course of a year or?

11 A. Up 'till the seed's in the ground we might.

12 Q. What might cause you to do that?

13 A. Oh, supply or change in marketing.

14 Q. Change in marketing?

15 A. Uh-huh.

16 Q. Do you mean broader economic conditions?

17 A. Right, yeah.

18 Q. Okay. And when do you typically put the seed in
19 the ground?

20 A. For corn, we potentially could be planting any
21 day now, and soybeans, usually end of April.

22 Q. So sometime in April?

23 A. April, May, uh-huh.

24 Q. April, May.

25 Do you employ any soil moisture monitoring

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1 equipment?

2 A. Other than a soil probe, no.

3 Q. Do you utilize that information gained through

4 the soil probe --

5 A. Oh, yeah.

6 Q. -- in your scheduling decisions?

7 A. Yes, uh-huh.

8 Q. How do you apply that information you learned

9 from that device to your daily operations?

10 A. In the application of irrigation or how?

11 Q. Yes, sir.

12 A. Depending on the crop, we would check for soil

13 moisture, and depending on the season or the timing

14 on the crop growth, go from there as far as -- as far

15 as a soil texture of moisture on the demand of

16 irrigation.

17 Q. So in simple terms, if you went out and checked

18 the soil moisture and found it was relatively moist,

19 that would influence your decision on whether to call

20 for irrigation water?

21 A. Yes, depending on the time of the year and the

22 growth of the -- stage of the plant growth.

23 Q. Gotcha.

24 MR. WILMOTH: Why don't we take 10

25 minutes and come back at 10 o'clock.

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1 MR. DRAPER: Okay.

2 (Recess was taken.)

3 Q. (BY MR. WILMOTH) Mr. Brzon, let's return. I
4 think I heard you discuss earlier that you raise
5 corn, soybeans, sometimes some sorghum, sometimes
6 some wheat; is that right?

7 A. Yes.

8 Q. Can you tell me with regard to each of these,
9 we'll just go down the list, how much of your corn is
10 irrigated versus dry land, and I could take it as
11 acreages or percentages?

12 A. For what years?

13 Q. Well, let's talk about '05 and '06.

14 A. I just can give you guesstimates on where we
15 were at at that time on those acreages.

16 Q. That would be fine.

17 A. Probably -- I'm not really for sure if we had
18 any irrigated or dry land corn those years. Probably
19 in '05 and '06, we were probably -- gosh, I'm not
20 really for sure where we were at on this. On a
21 percentagewise, we usually used to try to stay 50/50,
22 but we were probably maybe 20/80 corn, soybean
23 rotation at that time. I don't really know for sure.

24 Q. With regard to just the corn?

25 A. Just the corn.

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1 Q. Do you recall which percentage was dry land
2 versus irrigated?

3 MR. DRAPER: In 2005?

4 MR. WILMOTH: Yeah.

5 A. I can't tell you right offhand where we were at.

6 Q. (BY MR. WILMOTH) What have you observed over the
7 last decade with regard to your corn yields?

8 A. I would say probably our corn yields have
9 increased.

10 Q. Over the decade?

11 A. Yes.

12 Q. How was your irrigated corn yield in '05 and
13 '06?

14 A. I don't really remember without...

15 Q. How was your dry land corn yield?

16 A. Not for sure if we had dry land corn in those
17 years or not.

18 Q. With regard to soybeans, I just ask you the same
19 set of questions, if you're not -- if you don't
20 recall, that's fine but...

21 A. Yeah, on acreages, I don't recall, but I'm sure
22 we had soybeans planted.

23 Q. In '05 and '06?

24 A. Yes, uh-huh.

25 Q. Do you remember if they were all irrigated or

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1 dry land?

2 A. They were probably some of both.

3 Q. Some of both?

4 A. I don't...

5 Q. How have your soybean yields changed over the
6 last 10 years?

7 A. Probably actually been pretty stable. I don't
8 think we've really seen a huge increase in yields on
9 those at all.

10 Q. And how about the sorghum, yields change much?

11 A. Not really on sorghum, pretty constant.

12 Q. And is that mostly dry land?

13 A. The sorghum would be, yes.

14 Q. And with regard to wheat over the last 10 years,
15 yields are stable?

16 A. Yeah, wheat has been stable.

17 Q. Is most of that dry land also?

18 A. Yes.

19 Q. If the soybean, sorghum and wheat are all fairly
20 stable, to what do you contribute the increase in
21 corn yield?

22 A. Probably just the technology advances as far as
23 hybrids.

24 Q. Some of the things we talked about earlier?

25 A. Right, uh-huh.

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1 Q. And that's just not happening with regard to
2 these other crops or people just aren't choosing to
3 plant them?

4 A. To a certain extent they're starting to happen
5 in soybeans, but other crops, they haven't, I mean,
6 the biotech is basically corn and soybeans.

7 Q. Do you recall planting any dry land corn in the
8 last five years on any of your ground that you farmed
9 either --

10 A. I'm sure we've had some, yes.

11 Q. What leads to your decision to plant dry land?

12 A. Availability of moisture and profitability.

13 Q. Profitability be tied to global markets --

14 A. Yes.

15 Q. -- I assume?

16 A. Local markets, global markets.

17 Q. Have you experienced any water shortages in
18 terms of availability over the last five years?

19 A. In the last five years? I can't really recall
20 that we've had a major problem.

21 Q. So your choice to plant dry land corn is not
22 driven by lack of water in that case?

23 A. Dry land corn, soil moisture profile and the
24 hopeful of average rainfall.

25 Q. Okay. And how do you make that decision, are

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1 you using your soil moisture probe, for example, in

2 April to --

3 A. Yes, before planting, our projected planting

4 dates, we would see what type of soil profile we have

5 as far as soil, soil moisture depth and depending on

6 what kind of cover crop or cover as far as residue we

7 had in the field, and if we're looking at a normal

8 type of season, basically we would probably go dry,

9 dry land corn.

10 Q. When you make that determination about whether

11 there is a normal type season, is that based on

12 information from KBID or are you looking at climate

13 records or just soil moisture?

14 A. Mostly just the weather patterns.

15 Q. Uh-huh.

16 A. If it's 95 degrees in March, it might not be a

17 very good idea.

18 Q. So are you planting any dry land this year?

19 A. We planted.

20 Q. About how much do you think percentagewise?

21 A. Probably 10 percent of our acres.

22 Q. Is that fairly representative of what you

23 typically plant as dry land?

24 A. No, it's probably a little more.

25 Q. How's your net profitability look on irrigated

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1 ground versus dry land ground with regard to corn?

2 Net of all your inputs, obviously.

3 A. For what year?

4 Q. Let's say this year -- last year.

5 A. Potentially if marketing plan goes well, it

6 should be pretty good.

7 Q. Are they comparable?

8 A. Comparable to?

9 Q. Your net production or your net revenue from dry

10 land versus irrigated corn.

11 A. Oh, no, there is no -- no comparison as far as

12 yield or potential. I mean potentially, your dry

13 land corn is going to be potentially 100-bushel less

14 than your irrigated corn.

15 Q. Sure. But in terms of your net cost of

16 production, your net income off of that ground, are

17 those numbers comparable?

18 A. Net return?

19 Q. Your net return.

20 A. No.

21 Q. How do they differ?

22 A. Well, you're getting twice the bushels off the

23 irrigated ground compared to dry land.

24 Q. Sure. But your inputs are greater off the

25 irrigated ground than --

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1 A. Not a lot greater, other than your cost of land.

2 Q. What about the cost of water?

3 A. That also -- that's a variable though so. Our
4 cost -- our cost of water as far as the district, we
5 pay for whether we get it or not, so our cost on
6 irrigated is constant.

7 Q. Okay. Whether -- so it's -- you're paying
8 whether you take it or not?

9 A. Right, uh-huh.

10 Q. And there is no additional charge for what you
11 take?

12 A. No.

13 Q. So you're paying the same -- if you take
14 10 inches or 1 inch in a given year, you're paying
15 KBID the same?

16 A. Yes.

17 Q. Do you know what that dollar figure is?

18 A. Now, I can't tell you right offhand, it's
19 substantial.

20 Q. So what's your net return on irrigated corn last
21 year?

22 A. Above all expenses?

23 Q. Yeah.

24 A. Depending on the farms and the soil types and
25 everything, depending on the yield and how the

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1 marketing went and everything, anywhere from 200 to

2 potentially 400.

3 Q. Dollars?

4 A. Uh-huh.

5 Q. And how about dry land, net, again, of all

6 costs?

7 A. I guess we didn't -- we didn't have any dry land

8 corn last year.

9 Q. What about the year before that?

10 A. I can't remember if we had dry land corn that

11 year or not either.

12 Q. So do you have any idea what your net return is

13 on dry land corn?

14 A. Tell me which farm I'm going to plant it on and

15 I can probably tell you pretty close.

16 Q. Let's take all three of them. Let's just do

17 each one. Let's take the --

18 A. On dry land corn?

19 Q. Let's just take each one in turn. On the

20 Elliott farm, what's your net return on irrigated

21 corn?

22 A. I'm -- I don't know offhand.

23 Q. Do you know your net return on dry land corn?

24 A. Not without sitting down and figuring it.

25 Q. How about the LMS Holding farm?

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1 A. I would have to sit down and figure it.

2 Q. How about the Faulkner Trust?

3 A. I would have to sit down and figure it.

4 Q. How about your farm that you own?

5 A. Without going through the number, I would have
6 to sit down and figure it.

7 Q. But you're confident that they're different?

8 A. Oh, absolutely.

9 Q. By what order of magnitude would you guess?

10 A. Depending on the soil structure and irrigation
11 practices and the tillage practices, it's so
12 variable. There is no way to really know until the
13 very end of the season.

14 Q. Okay. Does it vary by appropriation, depending
15 on what water right you're using?

16 A. To a certain extent.

17 Q. What's the cause of that?

18 A. The timing and availability of water, uh-huh.

19 Q. Okay. As far as inputs on the irrigated ground,
20 what's your electric cost for pumping?

21 A. It's on a vary, from year to year, quite a
22 substantial.

23 Q. How about last year?

24 A. Per acre, I can't really tell you.

25 Q. What was the total?

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1 A. Substantial.

2 Q. You don't know the number?

3 A. No.

4 Q. Do you know by farm?

5 A. Not without going back through my records.

6 (Discussion off the record.)

7 Q. Mr. Brzon, we queried the Kansas water rights
8 database known as the WIMAS database, are you
9 familiar with that?

10 A. Yes.

11 MR. WILMOTH: This is Exhibit 5.

12 (Exhibit No. 5, marked for identification.)

13 Q. Could you look this over, and I realize you
14 haven't had a chance to look at this because we just
15 provided it to you, but assuming for the sake of
16 argument that this is -- data is accurate, does this
17 look like it reflects your water usage and acres
18 irrigated?

19 A. And this pertains to what farms?

20 Q. These are all of the water rights listed under
21 your name in the WIMAS database?

22 A. Without knowing which farms these are
23 actually -- I'm trying to think which ones would
24 actually be under my name. If they were on there,
25 it's probably pretty close to as recorded probably.

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1 Q. Do you report your water usage to the state?

2 A. Yes.

3 Q. Is that an annual reporting obligation?

4 A. Yes.

5 Q. So is this information then information that the
6 state collected from you and put into its database?

7 A. I would assume, yes.

8 Q. Does this water right pertain to the farm owned
9 by you and your brother?

10 A. I would assume so.

11 Q. So I notice in 2006, that you used no
12 groundwater on that farm. Why is that?

13 A. I'm not really for sure. Probably because we
14 either did a preventive planning or didn't have any
15 irrigated crop planted that year maybe.

16 Q. Do you typically use groundwater to supplement
17 your surface water supply?

18 A. Yes, in the district.

19 Q. What percentage of your ground do you think is
20 irrigated by groundwater?

21 A. I'm sorry, what was that?

22 Q. What percentage of your ground within the
23 district is irrigated by groundwater, on this farm?

24 A. Percentage?

25 Q. (Attorney nods.)

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1 A. Whatever that 75 acres or 78 acres would come
2 to, probably.

3 Q. Well, for example, in 2004, if you look at the
4 acres irrigated, they've got reported 155 acres
5 irrigated with groundwater. Do you have 155 acres?

6 A. Yes, I think so.

7 Q. Could you have elected to irrigate with
8 groundwater in 2006, that same 155 acres?

9 A. I'm not really for sure on that. I would have
10 to look to see what my records actually show.

11 Q. Are your records different than the records you
12 reported to the Kansas Department of Water Resources?

13 A. Not that I'm aware of, but I'm trying to think
14 what took place in '06. I'm not really for sure.

15 Q. Okay. How about in 2005, do you recall
16 irrigating 100 acres with groundwater then?

17 A. I'm not really for sure. My brother basically
18 manages that farm, that unit, I think, the one we're
19 talking about.

20 Q. All right. Mr. Brzon, I have some subsidy
21 records here for your review.

22 MR. WILMOTH: This is Exhibit 6.

23 (Exhibit No. 6, marked for identification.)

24 Q. Could you take a look at that and tell me if you
25 would agree that the U.S. government has paid you

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1 over \$280,000 in subsidies?

2 A. Yes.

3 Q. How many entities receive a part or all of those

4 subsidies or is that all for you and your brother?

5 A. Yes.

6 Q. Do you receive any portion from any of these

7 other entities, the LES -- LMS or Faulkner Trust?

8 A. Just my crop share, whatever percentage that

9 would be from them.

10 Q. Do you have any idea what portion of the

11 payments were for drought relief and which portion

12 was for disaster?

13 A. No.

14 Q. Do you typically farm nonprogram crops when you

15 take a preventive planning payment?

16 A. Nonprogram crop?

17 Q. Just a cover crop. I mean, obviously can't --

18 you're not farming corn, I assume. If you enroll in

19 a preventive planning program, do you put a cover

20 crop on the ground?

21 A. Yes.

22 Q. Did you harvest that?

23 A. No.

24 Q. There is no income off of that crop?

25 A. No.

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1 Q. Those records indicate that you received \$60,000
2 in federal subsidies in 2005. That's substantially
3 higher than 2006. Can you tell me why?

4 A. Looks like -- looks like the payment schedule is
5 different as far as commodity subsidy and
6 conservation subsidy. If I remember right, in '05, I
7 probably used a constructed irrigation system,
8 probably.

9 Q. In '05?

10 A. Uh-huh.

11 Q. Do you recall what percentage of that 60,000 was
12 for preventive planning?

13 A. I don't think any of this would have been
14 preventive planning.

15 Q. Did you receive any preventive planning payments
16 in '05?

17 A. Yes.

18 Q. How much?

19 A. I don't know.

20 Q. How about in '06?

21 A. I think we did, but I'm not for sure.

22 Q. Don't know how much?

23 A. Yeah.

24 Q. Do you recall what your total farm income was in
25 '05, from this farm, from your farm?

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1 A. No, I don't.

2 Q. Do you recall what your total farm income was
3 last year?

4 A. Not -- no, I don't.

5 Q. Do you know what your average farm income is
6 over the last decade?

7 A. No.

8 Q. Mr. Brzon, I'm going to hand you a copy of a
9 news release from the Kansas Department of
10 Agriculture.

11 MR. WILMOTH: This will be Exhibit

12 7.

13 (Exhibit No. 7, marked for identification.)

14 Q. About halfway down, it indicates that you were
15 candidate for the corn commission, and it also
16 indicates that you're active in water issues in the
17 Republican River basin.

18 Could you explain the nature of that activity,
19 if you agree with the statement, I know you didn't
20 make it but...

21 A. In what portion of the -- of the sentence here?

22 Q. The statement that indicates you're active in
23 Republican River water matters. Do you agree with
24 that statement?

25 A. Yes.

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1 Q. Could you explain the nature of your activity.

2 A. Just from being a producer and a landowner,
3 trying to stay informed and help people keep informed
4 of the water issues.

5 Q. How do you help people keep informed?

6 A. Just visiting with them on -- a lot of times
7 they will ask me a question and I try to tell them or
8 lead them to the best answer that -- possible.

9 Q. So your role is one of information provider?

10 A. As a neighbor.

11 Q. Is there anything special that you do aside from
12 your neighbors to keep abreast of events, do you work
13 with the department of resources in any capacity?

14 A. I have their phone number.

15 Q. So there is nothing that you engage in in
16 particular different from your neighbors?

17 A. I think everybody -- I've served on some
18 committees in the past and just tried to stay abreast
19 of the political issues on water and even state
20 issues. I mean, rules and regs are coming out every
21 day.

22 Q. What committees have you served on in the past?

23 A. Oh, I'm sure there's been some advisory
24 committees.

25 Q. Could you describe the nature of them. As they

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1 relate to the Republican River.

2 A. Well, most of anything I've served on would be

3 basically as a stakeholder in the basin, probably.

4 Q. Do you serve on the Lower Republican Basin

5 Advisory Committee?

6 A. No.

7 Q. Have you ever done so?

8 A. No.

9 Q. Do you know what that is?

10 A. Yes.

11 Q. Could you tell me what it is?

12 A. It's an entity that advises the water of --

13 Kansas Water Authority on issues.

14 Q. Do those decisions affect you at all?

15 A. Potentially, they could.

16 Q. Have you ever sought to serve on that committee?

17 A. No.

18 Q. Are the committees on which you served

19 comparable to that committee?

20 A. No.

21 Q. Do you serve on or have you served on any

22 committees in the Republican River basin?

23 A. Not that I can think of.

24 Q. Can you tell me one committee that you've served

25 on?

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1 MR. DRAPER: In the Republican

2 basin?

3 MR. WILMOTH: No, anywhere.

4 A. Anywhere? As far as relating to what?

5 Q. (BY MR. WILMOTH) Well, I'm just trying to

6 understand your reference. You said you served on

7 some committees in the past. I understand you said

8 you haven't served in the -- on the committee in the

9 Republican River basin. So my question is, which

10 committees?

11 A. I've served on a KSU, Kansas State University,

12 research advisory committee. I've served on a -- I'm

13 trying to think what the actual title of it was. I

14 think it was actually called the Lower Republican

15 Basin Stakeholders Committee.

16 Q. Is that --

17 MR. WILMOTH: I'm sorry, could you

18 read that back.

19 (The record was read by the reporter as

20 requested.)

21 Q. Could you describe for me the nature of the

22 stakeholder committee you just referenced, who are

23 the committee participants?

24 A. Oh, without -- there was a number of 'em.

25 Q. Let me clarify, I'm sorry. I'm not asking

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1 specifically for names, are they Kansas farmers?

2 A. There was two farmers on there and mostly some
3 municipality representatives.

4 Q. Are these all Kansas entities?

5 A. Yes.

6 Q. Are -- no Nebraska?

7 A. Not that I'm aware of.

8 Q. What was the goal of that committee?

9 A. To see what the feasibility of the future of the
10 Republican River basin would be.

11 Q. Did you have a chance to interact with the State
12 of Kansas as to the conclusions of the committee?

13 A. The State of Kansas as being?

14 Q. Department of Water Resources, Department of
15 Agriculture.

16 A. Yes.

17 Q. What was the committee's conclusion or
18 recommendation?

19 A. If I remember right, it was to try and seek
20 funding for -- jointly with Nebraska and Colorado to
21 study the basin, I believe, if I remember right.

22 Q. Was there an objective to the study?

23 A. To see what potential of water holding capacity
24 and potential flow of the Republican basin could
25 potentially be.

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1 Q. Was the ultimate objective to improve water

2 availability or storage capacity or --

3 A. All of the above.

4 Q. -- something?

5 A. Yep, all of 'em.

6 Q. Do you recall when that was?

7 A. I think we concluded our last meeting

8 probably -- probably over a year ago.

9 Q. Do you recall how long that committee was

10 active?

11 A. Probably a couple years, I think, it seemed

12 like.

13 Q. With regard to the conclusions of the committee,

14 were they ever memorialized in any report or

15 documentation?

16 A. Oh, I'm sure they have.

17 Q. Do you know whether that's publicly available?

18 A. I'm not aware that it is, but I'm sure it is.

19 Q. Who would be the holder of that information?

20 Does the committee have a secretary?

21 A. Probably the Kansas water office or the --

22 probably the Division of Water Resources even. And

23 probably the State of Nebraska because I think if --

24 I think that was all public information as far as for

25 the cost share on the basin study.

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1 Q. Okay. So I infer that you were in favor of the
2 basin study?

3 A. Yes.

4 Q. Do you have an opinion about certain
5 improvements on the basin that should be made, for
6 example, changes to the operation of Harlan County
7 Lake or expansion of Lovewell Reservoir or the
8 addition of new wells or an entire new storage
9 facility?

10 A. How long do we have?

11 Q. As long as you want. I got an hour and 40
12 minutes.

13 A. Yes, I have an opinion.

14 Q. What are they?

15 A. I don't agree with the bypass at Guide Rock, I
16 don't agree with irrigation development below Guide
17 Rock, and I don't really feel that in Kansas, the
18 more efficient a irrigator becomes by investing in
19 irrigation systems, that we don't get the full use of
20 our water.

21 Q. You're in a use it or lose it situation?

22 A. To a certain extent.

23 Q. So, for example, if you're irrigating 100 acres
24 with a 100 acres -- acre feet of water, if you
25 improve efficiencies by 20 percent, you're not

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1 authorized to take that 20 acre feet that you gain
2 and move it somewhere else; is that what you're
3 saying?

4 A. Yes.

5 Q. And what happens to that water then, it just
6 goes down the system?

7 A. Yes.

8 Q. Do you have any views about the expansion of
9 Lovewell Reservoir, would you view that favorably or
10 negatively?

11 A. Without knowing the full ramifications, I -- it
12 would be real hard to really know one way or the
13 other, really. There is some pros and cons both
14 sides.

15 Q. Mr. Brzon, this is an article from the Lincoln
16 Journal Star. I would like you to take a look at
17 that.

18 MR. WILMOTH: This will be Exhibit
19 8.

20 (Exhibit No. 8, marked for identification.)

21 Q. There are a series of quotations from you on the
22 second page, about halfway down, I believe is where
23 they begin.

24 (Witness complies.)

25 Q. Do you recall giving that interview?

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1 A. Not really.

2 Q. Do you recall making any of those statements?

3 A. No, I don't.

4 Q. Do you deny that you made those statements?

5 A. No, I don't.

6 Q. There is a discussion in here about two-thirds
7 of the way down talking about some lip service that
8 Kansas was putting up with with regard to Nebraska
9 compliance. Is that how you felt at the time?

10 A. Probably was.

11 Q. Do you still feel that way?

12 A. Probably to a certain extent.

13 Q. Is it your view that Nebraskans are stealing
14 your water?

15 A. I wouldn't say stealing.

16 Q. Was that your view at the time?

17 A. I don't think stealing was mentioned, was it?

18 Q. No. I'm just asking.

19 A. No, I don't think so.

20 Q. Were you pleased to see Kansas initiate the
21 litigation?

22 A. Yes.

23 Q. Why so?

24 A. We have a compact between the states, and that
25 compact should be enforced and abided by.

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1 Q. And to your knowledge, when was the last time
2 that Nebraska was out of compliance?

3 A. I'm not really for sure.

4 Q. Have you suffered any water shortages since
5 2007?

6 A. Not -- I don't know really on that.

7 Q. This article indicates that you couldn't use
8 certain pumps during 2007, do you recall that
9 occurrence?

10 A. I'm not for sure if that was 2007 or referring
11 to 2006.

12 Q. I'm not meaning to validate the article so much
13 as to understand whether that occurred or not.

14 A. I'm sorry?

15 Q. I'm not asking you to validate the terms of the
16 verbiage on the page, just asking you from your
17 recollection, if you recall being unable to utilize
18 pumps in the river in 2007?

19 A. I'm not for sure in 2007.

20 Q. Did you think at that time or do you think now
21 that Kansas is doing everything it should be doing to
22 enforce the compact?

23 A. Pretty much so.

24 Q. How will a successful Kansas suit affect you?

25 A. Hopefully, it will have a reliable source of

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1 basin flow.

2 Q. Do you have reason to believe that there are
3 additional shortages in the immediate future due to
4 the actions of Nebraska?

5 A. Potentially, there is always a potential.

6 Q. Okay. Do you have any concern about this year,
7 for example?

8 MR. WILMOTH: No. 9.

9 A. 95 degrees in March, it's kind of scary.

10 (Exhibit No. 9, marked for identification.)

11 Q. Is that yes?

12 A. Yes.

13 Q. You're concerned that Nebraska will be out of
14 compliance with the compact?

15 A. Potentially.

16 Q. 2012, okay.

17 And you base that on the weather?

18 A. Yes.

19 MR. DRAPER: You asking for a
20 legal conclusion about --

21 MR. WILMOTH: Just asking his
22 concerns.

23 MR. DRAPER: -- compliance with
24 the compact?

25 MR. WILMOTH: Just asking if he's

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1 concerned about.

2 A. I'm always concerned.

3 Q. (BY MR. WILMOTH) Okay. Mr. Brzon, I hand you
4 another article from the Hutchinson News. Could you
5 take a moment and look this over.

6 MR. DRAPER: Is this an exhibit?

7 MR. WILMOTH: Exhibit 9, yes.

8 Q. (BY MR. WILMOTH) Direct your attention to the
9 last page, there is a couple of statements by you,
10 allegedly by you. I don't all trust the news sources
11 either.

12 Do you recall that interview?

13 A. No, I don't.

14 Q. Do you deny giving the interview?

15 A. No, I don't.

16 Q. There is a reference there indicating that you
17 felt enforcement should be first on the list. I
18 assume that's enforcement of the compact; is that
19 right?

20 A. Yes.

21 Q. Why did you feel that way?

22 A. Because we have a interstate compact and all
23 parties should abide by the compact.

24 Q. And if Nebraska is in compliance with the
25 compact, is it your view that you suffer no harm due

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1 to consumption in Nebraska?

2 A. If they -- if Colorado and Nebraska and Kansas

3 all abide by the contract -- compact, there would be

4 limited risk of not having basin flow.

5 Q. Have you ever been water short in years when

6 Nebraska was in compliance with the compact?

7 A. I don't know --

8 MR. DRAPER: Are you asking him to

9 assume certain years that --

10 Q. (BY MR. WILMOTH) Let's say from '07 forward,

11 have you had any water shortages?

12 A. '07 forward now?

13 Q. 'Till today.

14 A. Not that I can recall. I'm -- I don't know for

15 sure.

16 Q. Getting back to your operations specifically, do

17 you ever purchase goods or services in the state of

18 Nebraska or from dealers in the state of Nebraska?

19 A. Some.

20 Q. What are the types of purchases you make?

21 A. Probably fertilizer and chemicals, probably.

22 Q. Do you purchase the majority of those that you

23 use in Nebraska or from Nebraska producers?

24 A. I don't know about a majority, but I'm sure we

25 produce or purchase some.

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1 MR. WILMOTH: All right. Let's
2 take until 11, and then I don't think we'll have
3 much more after that.

4 (Recess was taken.)

5 Q. (BY MR. WILMOTH) Just one last question or maybe
6 two, Mr. Brzon, but we've covered a lot of issues
7 with regard to your farming operation today. Are
8 there any matters that we did not cover today that
9 you have discussed with the State of Kansas?

10 A. Not that I'm aware of.

11 Q. And have you had any conversations during the
12 course of the last three hours with counsel for
13 Kansas?

14 A. Conversations, yes.

15 Q. Have they directed you in any way with regard to
16 answers to any of the questions I might ask?

17 A. No.

18 MR. WILMOTH: Okay. John, do you
19 have any cross?

20 MR. DRAPER: You can give us a
21 minute, we'll advise you when we're ready.

22 (Recess was taken.)

23 CROSS EXAMINATION

24 BY MR. DRAPER:

25 Q. I do have a few follow-up questions. Mr. Brzon,

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1 Mr. Wilmoth asked you about coverage of your expenses
2 with respect to your testimony, is it true that the
3 State of Kansas is covering your expenses for your
4 appearance today and your testimony in the case?

5 A. Yes.

6 Q. And is it also true that Kansas is compensating
7 you for your time away from your farming operation?

8 A. Yes.

9 Q. At what rate?

10 A. \$100 an hour was discussed.

11 Q. Okay. Secondly, Mr. Wilmoth also asked you
12 about items we had discussed. Did we discuss with
13 you the occurrence of groundwater pumping in 2006 in
14 the Nebraska Bostwick Irrigation District?

15 A. Yes.

16 Q. And did you know whether that pumping occurred
17 in that year?

18 A. From observation up there, yes, I would say it
19 would or had.

20 MR. DRAPER: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. WILMOTH:

23 Q. Mr. Brzon, just a quick follow-up. On what do
24 you base your observations of the groundwater pumping
25 in the Nebraska Bostwick Irrigation District in 2006?

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1 A. Well, since the Nebraska Bostwick wasn't
2 delivering water, something had to be going on up
3 there as far as water delivery.

4 Q. Did you go there?

5 A. I purchased fertilizer and seed in Nebraska.

6 Q. And at that time, you observed wells withdrawing
7 groundwater?

8 A. I noticed that their crops looked pretty good.

9 Q. But you didn't observe any wells withdrawing
10 groundwater?

11 A. No, not -- as far as just alongside the road is
12 the only observation I woulda seen.

13 Q. Do you know whether those wells are operated in
14 every year?

15 A. There is some of them that sat really close to
16 the highway there and you would assume they are.

17 MR. WILMOTH: I have nothing
18 further.

19 MR. DRAPER: Okay. I think that
20 will do it from our point of view.

21 MR. WILMOTH: Thank very much,
22 Mr. Brzon.

23 MR. DRAPER: Read and sign.

24 (The deposition concluded at 12:22 p.m.)

25

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1 Deposition of L. MICHAEL BRZON

2

3

4 Signature of witness

5

6

7 STATE OF _____)

8 : SS.

9 COUNTY OF _____)

10

11

12

13 Subscribed and sworn to before me this

14 ____ day of _____, 20____

15

16

17

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19 GENERAL NOTARY PUBLIC

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1 C E R T I F I C A T E

2 STATE OF NEBRASKA)

 : ss.

3 COUNTY OF LANCASTER)

4 I, Christine M. Salerno, RPR, CCR, General

5 Notary Public in and for the State of Nebraska, do

6 hereby certify that, L. MICHAEL BRZON was by me duly

7 sworn to testify the truth, the whole truth and

8 nothing but the truth, and that the deposition by

9 said witness was reduced to writing by me.

10 That the within and foregoing deposition was

11 taken by me at the time and place herein specified

12 and in accordance with the within stipulations; the

13 reading and signing of the witness to said deposition

14 having not been waived.

15 That the foregoing deposition is a true and

16 accurate reflection of the proceedings taken in the

17 above case.

18 That I am not counsel, attorney, or relative of

19 either party or otherwise interested in the event of

20 this suit.

21 IN TESTIMONY WHEREOF, I have placed my hand and

22 notarial seal this 7th day of April, 2012.

23 _____

24 Christine M. Salerno, RPR, CCR

25

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1 DEPOSITION OF L. MICHAEL BRZON

2

3 PAGE & LINE REASON FOR CHANGE

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